
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
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Subject: Certificated school employees

NOTE: This bill has been amended to replace its contents and this is the first time the bill is being heard in its current form.

SUMMARY

This bill extends the existing probationary period for certificated employees from two years to three years while requiring school districts to provide mentoring and coaching for teachers in their third year of probation. This bill also authorizes school districts to negotiate an alternative teacher dismissal process. Finally, this bill provides additional requirements regarding the evaluation and training of school principals.

BACKGROUND

Existing law:

- 1) Establishes the Stull Act which expresses legislative intent that school districts and county governing boards establish a uniform system of evaluation and assessment of certificated personnel. With the exception of certificated personnel who are employed on an hourly basis to teach adult education classes, the Stull Act requires school districts to evaluate and assess teacher performance as it reasonably relates to the progress of pupils toward district-adopted and, if applicable, state-adopted academic content standards as measured by state-adopted criterion referenced tests; instructional techniques and strategies used by the employee; the employee's adherence to curricular objectives; and the establishment and maintenance of a suitable learning environment within the scope of the employee's responsibilities.
(Education Code § 44660, et seq.)
- 2) Requires an evaluation and assessment of the performance of each certificated employee to be made at least once each school year for probationary personnel, at least every other year for personnel with permanent status, and at least every five years for permanent employees who have been employed with the district at least 10 years and were rated as meeting or exceeding standards in their previous evaluation. Teachers who receive an unsatisfactory rating may be required to participate in a program designed to improve the employee's performance and to further pupil achievement and the instructional objectives of the district. However, if the district participates in the Peer Assistance and

Review (PAR) program, then the teachers who receive an unsatisfactory rating are required to participate in that program. (EC § 44664)

- 3) Establishes the Peer Assistance and Review (PAR) program for teachers by authorizing school districts and the exclusive representative of the certificated employees to develop and implement the program locally. The PAR programs are to include multiple observations of a teacher during periods of classroom instruction and sufficient staff development activities to assist a teacher in improving his or her skills and knowledge. The final evaluation of a teacher's participation in the program is made available for placement in his or her personnel file. (Education Code § 44505)
- 4) Provides that a probationary employee becomes a permanent employee after completing two consecutive school years in a position requiring certification. School districts must notify probationary employees of a decision to elect or non-elect for permanent status by March 15th of the employee's second consecutive year of employment by the district. During the period of probation, an employee may be dismissed without cause. (EC § 44929.21)
- 5) Requires school districts to provide preliminary notification to a permanent employee that his or her services will not be required for the ensuing year no later than March 15th and provide final notification of termination of his or her services by May 15th.
- 6) Allows permanent employees that receive a preliminary layoff notice to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and students. Copies of the proposed decision, which is not binding on the governing board, shall be submitted to the governing board and to the employee on or before May 7th. (EC § 44949)
- 7) Prohibits the dismissal of a certificated employee who has achieved permanent status except for one or more causes that are specified in statute, including immoral or unprofessional conduct, dishonesty, unsatisfactory performance, and the conviction of a felony or of any crime involving moral turpitude. Current law also requires a governing board to notify an employee in writing of its intention to dismiss or suspend him or her at the expiration of 30 days unless the employee demands a hearing. Current law prohibits a 30-day notice of Intent to Dismiss or Suspend from being issued between May 15th and September 15th in any year. (EC § 44932, § 44934 and § 44936)
- 8) Establishes additional notice requirements that school districts must follow when seeking to suspend or dismiss an employee for unprofessional conduct or unsatisfactory performance, as specified, including advance notice of at least 45 days for unprofessional conduct and advance notice of at least 90 days for unsatisfactory performance. (EC § 44938)

- 9) Authorizes the immediate suspension of a permanent employee for specified conduct including: immoral conduct, conviction of a felony or any crime involving moral turpitude, incompetency due to mental disability, and willful refusal to perform regular assignments without reasonable cause. (EC § 44939)
- 10) Specifies various requirements regarding dismissal or suspension proceedings, including the requirement that a hearing be conducted by a commission on professional competence made up of three members, as specified. (EC § 44944)
- 11) Specifies that the criteria for effective school principal evaluations may be based upon the California Professional Standards for Educational Leaders, which identify a school administrator as being an educational leader who promotes the success of all pupils through leadership that fosters specified components, including a shared vision, effective teaching and learning, management and safety, and professional and ethical leadership. (EC § 44671)

ANALYSIS

This bill:

- 1) Amends provisions in the Government Code to authorize a school district and the exclusive representative, upon request of either party, to meet and negotiate regarding causes and procedures for the dismissal of certificated employees as an alternative to the various dismissal provisions that currently exist in Education Code § 44944.
- 2) Provides that a highly certificated employee who after being employed for three consecutive years by a school district or county superintendent of schools in a teaching position is reelected for the next succeeding school year shall be classified as and become a permanent employee.
- 3) Provides that a certificated employee who is reelected to a third complete consecutive year shall continue to participate in the mentoring relationship with the support and professional development providers initiated during the California beginning teacher support and assessment program pursuant to Section 44279.2. Provides that the employee is not required to continue other aspects of the program during his or her third year.
- 4) Provides that a certificated employee who had previously been granted permanent status by another school district or county superintendent of schools and who is further reelected and employed during the succeeding school year shall upon reelection for the next succeeding school year to a position requiring certification qualifications be classified as and become a permanent employee, as specified.

- 5) Makes conforming changes regarding the extension of the probationary period to three years for certificated employees, as specified, to the various statutory provisions for school district interns.
- 6) Provides that to the extent the bill's provisions conflicts with a provision of an existing collective bargaining agreement as specified, the changes made by this bill shall not apply until expiration or renewal of that collective bargaining agreement.
- 7) Defines a highly effective certificated employee, as specified.
- 8) Requires the individualized program requirement for the professional services credential with a specialization in administrative services to include training on how to properly and effectively evaluate certificated employees. Provides that a credential candidate shall complete the individualized program during the first two years of experience in a full-time administrative position.
- 9) Encourages school districts to create a one-year principal or vice principal support program allowing a highly effective school administrator, as determined by the school district, to support a principal or vice principal demonstrating unsatisfactory performance, who has completed the individualized program for a professional services credential and who is demonstrating unsatisfactory performance, as determined by the school district, to become proficient in the California Professional Standards for Educational Leaders.
- 10) Requires each school district to create a multiple-day administrator training program on how to evaluate teachers. The program shall only be completed by principals, vice principals, or assistant principals, as applicable, who evaluate teachers.
- 11) Provides that school districts may identify who will conduct the evaluation of each school vice principal, and assistant principal.
- 12) Requires that every school principal, vice principal, and assistant principal be evaluated annually for the first and second year of employment in that capacity. Provides that additional evaluations that occur outside of the regular intervals determined by the governing board of the school district may be agreed upon between the evaluator and principal, vice principal, or assistant principal. Allows principals or vice principals to review school success and progress throughout the year.
- 13) Requires the superintendent of a school district to annually submit a report to the governing board of the school district outlining his or her plan for the evaluation and support of principals, vice principals, and assistant principals.
- 14) Specifies the intent of the Legislature that every school principal, vice principal, and assistant principal shall be evaluated as frequently as necessary to ensure that they are satisfactorily proficient in the California Professional Standards for Educational Leaders and are performing effective evaluations of teachers.

- 15) Requires the criteria for principal, vice principal and assistant principal evaluations to be based upon the California Professional Standards for Educational Leaders, as specified.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "teaching is one of the most important professions a person can pursue. It is both a calling and a career. It requires significant devotion, a willingness to work long hours, and the ability to balance the demands of students, parents, and administrators. Becoming a highly effective teacher is an intensive process. Unfortunately, as the need for talented teachers continues to grow, current and former teachers remain discouraged by difficult working conditions and a desperate need of additional support and professional development. According to the Greatness By Design report written by the Superintendent of Public Instruction Tom Torlakson's Task Force on Educator Excellence, 'local school districts hire teaching candidates and decide what support, if any, to provide on the job. Additional training is a patchwork of overlapping efforts. Observations and evaluations have been haphazard and inconsistent – and quite disconnected from the initial training teachers receive. And if the system fails, we blame the teacher.'"
- 2) ***Extending the probationary period.*** This bill requires the probationary period for certificated staff to last for three years, which is an increase of one year over the existing two-year period. For the third year of probation, school districts would be required to provide additional support and training for these teachers. According to the author's office, "a new teacher is on probation for the first eighteen months. During that time, they receive mentorship and training through the Beginning Teacher Support and Assessment (BTSA) program. At the conclusion of BTSA, the teacher is either hired permanently, or released. This process does not acknowledge that some teachers need more than 18 months of support. AB 934 solves this problem by creating a high-performing culture where teachers are given the tools and support to become exemplary performing educators."

Currently, during the two-year probationary period, the law does not require a school district to demonstrate cause or provide due process for employees that are fired within this period. This would remain unchanged for the third year of probation under this measure. While the bill provides additional time for school districts to evaluate whether a new teacher is effective or not and more opportunity for the teacher to improve his or her skills, the Committee may wish to consider whether extending the probationary period is reasonable absent a requirement for school districts to indicate a reason for not electing to keep the teacher and not affording that teacher with due process rights.

Additionally, while the bill requires the mentoring and coaching aspect of BTSA to continue for the third year of probation, not every school district utilizes BTSA as its induction program for new teachers. Induction continues to be the primary route for earning a clear teaching credential for new teachers, but school districts may use other induction programs approved by the Commission on Teacher Credentialing. For this reason, **staff recommends** that the bill's requirement

regarding the mentoring and coaching aspect of Beginning Teacher Support and Assessment (BTSA) be broadened to include mentoring and coaching consistent with the induction program that the school district currently participates in.

- 3) ***Recent teacher dismissal reforms.*** AB 215 (Buchanan, Chapter 55, Statutes of 2014) modified the dismissal procedures for certificated employees and was intended to reduce the timeframe associated with these proceedings in order to save school districts time and money. For all dismissal proceedings, except those initiated pursuant to the accelerated process for egregious misconduct, the bill included several reforms such as removing the summer moratorium on issuing 30-day notices for teacher misconduct cases, accelerating the timeframe for which hearings shall commence, shortening the timeline to complete a hearing, limiting the discovery process, and limiting the motions to amend charges.

AB 215 also created a bifurcated teacher dismissal process by establishing separate procedures for cases involving employees accused of egregious misconduct such as sexual abuse, child abuse, and certain drug crimes. The hearings based on charges of egregious misconduct would be conducted by an administrative law judge only instead of the traditional three-person commission on professional competence.

Given that these dismissal reforms have only been in place for less than two years, the Committee may wish to consider whether it is either premature or necessary at this point to make any changes regarding teacher dismissal. However, to the extent that the existing statutory provisions need further improvement and a school district and its local union are able to negotiate their own unique dismissal procedures (perhaps in conjunction with a peer assistance and review program), that bill would provide that option. Note that the bill's provision would not be a requirement. School districts and their local unions would simply be authorized to negotiate an alternative if they elect to do so.

- 4) ***School administrator provisions.*** The bill specifies additional requirements that are intended to increase school administrator accountability and leadership development. Specifically, the bill requires superintendents to use the California Professional Standards for Educational Leaders to evaluate their administrators and also requires school principals and vice principals to complete a training program on how to evaluate teachers. The bill also encourages districts to develop a peer assistance and review program for struggling principals and vice principals.

The Association of California School Administrators and the California School Boards Association indicate several concerns regarding these provisions. First, the bill requires training in employee evaluations for individuals that may not be involved with these assessments. Additionally, the bill limits the flexibility around the length of training and when it must be completed. Further, the Association of California School Administrators indicates that the requirement to develop the administrator training program on how to properly evaluate teachers would be

extremely costly and should be accompanied by resources to support the program along with allowing the district to determine how long the training should be.

- 5) ***Vergara v. California.*** The *Vergara* case was filed here in California by nine public school children from around the state in May 2012. The case challenges various state employment provisions of the education code related to the way the teacher workforce is managed, including seniority and last in, first statutes, and whether they protect incompetent teachers and disproportionately hurt low-income and minority children. The plaintiffs argue that these laws play out in classrooms and schools in ways that violate students' rights to access equal education under the California constitution. A decision was reached in August 2014 with the plaintiffs prevailing. However, the decision was appealed and the state appeals court reversed the trial court's decision on April 14, 2016. The plaintiffs subsequently filed petition for review with the Supreme Court on May 24, 2016. Depending on the outcome, the *Vergara* case could potentially impact the same provisions of the Education Code that this bill proposes to amend.

- 6) ***Related and prior legislation.***

AB 2826 (Weber) specifies additional measures of pupil progress, instructional techniques, and strategies, and adherence to curricular objectives that school districts may use for purposes of teacher evaluation. This bill is scheduled to be heard in this Committee on June 29, 2016.

SB 499 (Liu, 2015) repeals and replaces various provisions of existing law governing the evaluation of certificated employees and also requires school districts to implement a best practices teacher evaluation system, as specified. This bill is pending in the Assembly Education Committee.

AB 575 (O'Donnell, 2015) requires school districts to implement teacher and administrator evaluation systems. This measure is pending in the Senate Education Committee.

AB 1495 (Weber, 2015) proposes various changes to the certificated employee evaluation system known as the Stull Act. This measure failed passage in the Assembly Education Committee.

AB 1078 (Olsen, 2015) would also make changes to the certificated employee evaluation system. This measure failed passage in the Assembly Education Committee.

AB 215 (Buchanan, Chapter 55, Statutes of 2014) modified the dismissal procedures for certificated employees who have attained permanent status and established a separate set of dismissal processes for employees charged only with egregious misconduct.

SB 441 (Calderon, 2013) proposed to amend various provisions of existing law governing the evaluation of certificated employees by requiring the evaluations to use multiple measures, including a minimum of four rating levels, increasing the

frequency of evaluations for teachers with 10 or more years of experience in a school district from every five years to every three years, and requiring school districts to consider the findings of sessions, surveys, and specific focus groups by subject matter and grade level from parents of pupils. SB 441 failed passage in this Committee on May 1, 2013.

SB 453 (Huff, 2013) would have authorized the governing board of a school district to evaluate and assess the performance of certificated employees using a multiple-measures evaluation system, authorized school districts to make specified employment decisions based on teacher performance, and expanded the reasons districts may deviate from the order of seniority in terminating and reappointing teachers. This bill failed passage in this Committee on April 24, 2013.

SB 1292 (Liu, Chapter 435, Statutes of 2012) authorized the evaluation of school principals based on the California Professional Standards for Educational Leaders as well as evidence of pupil academic growth, effective and comprehensive teacher evaluations, culturally responsive instructional strategies, the ability to analyze quality instructional strategies and provide effective feedback, and effective school management.

AB 5 (Fuentes, 2012) would have repealed and replaced various provisions of existing law governing the evaluation of certificated employees and required school districts to implement a best practices teacher evaluation system. This measure failed passage on the Senate floor.

SUPPORT

Association of California School Administrators

OPPOSITION

California Federation of Teachers
California Teachers Association
Service Employees International Union
Teach Plus

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